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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PAMELA STONEBREAKER,)	Civil No. 11-0797-WQH(WVG)
)	
Plaintiff,)	ORDER DENYING EX PARTE MOTION
)	FOR APPOINTMENT OF GUARDIAN AD
v.)	LITEM (DOC. #29)
)	
THE GUARDIAN LIFE INSURANCE)	
COMPANY, et al.,)	
)	
Defendants.)	
)	
_____)	
)	
PAMELA STONEBREAKER,)	Civil No. 11-0871-WQH(WVG)
)	
Plaintiff,)	ORDER DENYING EX PARTE MOTION
)	FOR APPOINTMENT OF GUARDIAN AD
v.)	LITEM (DOC. #20)
)	
PRUCO INSURANCE COMPANY,)	
)	
Defendant.)	
)	
_____)	

1 On June 7, 2011, proposed Guardian Ad Litem Serena Blach-
2 Villnow filed an Ex Parte Motion For Appointment as Guardian Ad
3 Litem in case number 11-0797 (hereafter "Guardian Life case"). On
4 June 14, 2011, proposed Guardian Ad Litem Serena Blach-Villnow filed
5 an Ex Parte Motion For Appointment as Guardian Ad Litem in case
6 number 11-0871 (hereafter "Pruco case"). In both Motions, Ms. Blach-
7 Villnow, Plaintiff's sister, requests that she be appointed as the
8 Guardian Ad Litem (hereafter "GAL") for Plaintiff Pamela
9 Stonebreaker's and the deceased's minor children, Kristin
10 Stonebreaker, Kelli Stonebreaker and Ryan Stonebreaker (hereafter
11 "minor children").^{1/}

12 Defendant Guardian Life Insurance Company of America
13 (hereafter "Guardian Life"), does not oppose the appointment of a
14 GAL for Plaintiff's minor children, but objects to Ms. Blach-
15 Villnow's appointment as GAL for them, because she appears to be
16 "too close to (Plaintiff) to independently represent the interest of
17 the minor (children) particularly when the interests of the minor
18 (children) may be adverse to (Plaintiff's) interests." Instead,
19 Guardian Life proposes that David Stonebreaker, the deceased's
20 brother, act as the GAL, because he currently serves as the
21 conservator for the grandfather of the minor children. Further,
22 Defendant Western Reserve Life Assurance Company (hereafter "Western
23 Reserve"), has applied to the San Diego Superior Court to have David
24 Stonebreaker appointed as Special Administrator for the estate of
25 the deceased. However, Western Reserve does not oppose the appoint-
26 ment of either Ms. Blach-Villnow or David Stonebreaker as GAL.

27
28 ^{1/} The Court notes that Kristin Stonebreaker is 15 years old, Kelli
Stonebreaker is 13 years old, and Ryan Stonebreaker is five years
old.

1 The Court having reviewed the papers submitted by counsel,
2 and having met privately with the minor children, HEREBY ORDERS:

3 Federal Rule of Civil Procedure 17 states in pertinent part:

4 (b) Capacity to sue or be sued is determined as
5 follows:

6 (3) ... by the law of the state where the court
7 is located.

8 (c)(2) A minor... who does not have a duly
9 appointed representative may sue by a next friend or
10 by a guardian ad litem. The court must appoint a
11 guardian ad litem - or issue another appropriate order
12 - to protect a minor... who is unrepresented in an
13 action.

14 California law applies to determine capacity to sue. Pursuant
15 to California law, a minor must be represented by a GAL in court
16 proceedings. Cal. Code of Civ. Pro. §372(a). A court has broad
17 discretion in ruling on an application for appointment of a GAL.
18 Kulya v. City and County of San Francisco, 2007 WL 760776 at *1
19 (N.D. Cal. 2007), citing Williams v. Superior Court, 147 Cal. App 4th
20 36, 47 (2007).

21 The GAL's main focus is the best interest of the minor. The
22 GAL is an officer of the court with the right to control the minor's
23 litigation. When a court chooses a GAL for a civil lawsuit, the most
24 important issue is the protection of the minor's interest in the
25 litigation. Kulya, supra, at *1. Under such circumstances, a parent
26 with a conflict of interest is not entitled to select the GAL or
27 control the tactical or strategic decision made by the GAL and/or
28 the minor child's attorney. Bhatia v. Corrigan, 2007 WL 1455908 at
*1 (N.D. Cal. 2007), citing Williams, supra, at 50.

 Here, the Court met with the minor children and spoke
privately with them. During the meeting, the Court explained to the

1 minor children the purpose of the meeting, the appointment of a GAL
2 for them who has their best interests in mind, and that Ms. Blach-
3 Villnow and David Stonebreaker have been proposed as the GAL.
4 Kristin and Kelli Stonebreaker^{2/} candidly discussed with the Court
5 their lives since the death of their father, the deceased, and their
6 views regarding Ms. Blach-Villnow and David Stonebreaker.

7 Due to the upheaval in Kristin and Kelli's family after the
8 death of their father and the many strangers that have been involved
9 in their lives since his death, they expressed their desire to have
10 someone familiar to them to be appointed as their GAL. They
11 expressed their desire that Ms. Blach-Villnow be appointed as their
12 GAL.

13 After having reviewed the papers submitted by counsel and the
14 authorities cited therein, and having met with the minor children
15 and discussed the appointment of a GAL for them, the Court finds
16 that neither Ms. Blach-Villnow nor David Stonebreaker would be
17 appropriate to serve as GAL for the minor children. The Court finds
18 that Ms. Blach-Villnow and David Stonebreaker have an actual or
19 potential conflict of interest in influencing any tactical or
20 strategic decisions to be made in this litigation.

21 While the Court does not desire to add to the minor chil-
22 dren's strife under the circumstances presented to them, the Court
23 believes that it is in the best interests of the minor children that
24 a neutral GAL be appointed for them. See Bhatia, supra, at *1-2.

25 Therefore, on or before June 30, 2011, Plaintiff shall
26 provide three names of neutral GALs to Defendants and the Court.

27
28 ^{2/} Kristin and Kelli Stonebreaker are charming and intelligent young
ladies who displayed remarkable maturity and understanding of the
litigation.

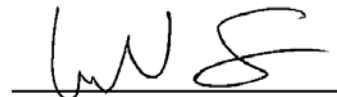
1 Collectively, and on or before the same day, counsel for Defendants
2 (in both the Gaurdian Life case and the Pruco case) shall provide
3 three names of neutral GALs to Plaintiff and the Court. The
4 submissions made by Plaintiff and Defendants shall identify the
5 reason(s) why the persons named qualify to be a GAL in this case and
6 shall provide any other information about that person which the
7 Court should consider in making a determination of the appropriate
8 GAL in this action.

9 Thereafter, Plaintiff and Defendants shall have the opportu-
10 nity to strike one name from each other's proposed GALs. On or
11 before July 5, 2011, Plaintiff and Defendants shall notify the Court
12 which proposed GALs have been stricken. From the remaining names,
13 the Court shall appoint a GAL for the minor children.

14 As a result, the Court DENIES Ms. Blach-Villnow's Ex Parte
15 Motion For Appointment of Guardian Ad Litem, sustains Guardian
16 Life's objection to the appointment of Ms. Blach-Villnow, and
17 rejects Guardian Life's proposal that David Stonebreaker serve as
18 GAL.

19 IT IS SO ORDERED.

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21 DATED: June 23, 2011

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24 Hon. William V. Gallo
25 U.S. Magistrate Judge
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